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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Saudi Arabia must take immediate steps to address concerns of UN Special Rapporteur on counter-terrorism Amnesty International's written statement to the 37th session of the UN Human Rights Council

At its 37th regular session, the UN Human Rights Council (HRC) will consider the report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concerning his visit to Saudi Arabia from 20 April to 4 May 2017.1

Amnesty International welcomes the preliminary findings of the former Special Rapporteur, and commends the mandate for its continuing engagement with the Saudi Arabian authorities. The organization is, however, concerned about the Saudi Arabian government's denial of access, despite repeated requests during the visit, to human rights defenders, writers, bloggers and journalists who have been prosecuted by the 2014 Law on Counter Terrorism and its Financing (the counter-terror law).

In the preliminary findings, the former Special Rapporteur expressed concerns in relation to the use of the counter-terror law against individuals peacefully exercising their rights to freedom of expression, association and assembly and noted that "the definition of terrorism in the counter-terror law fails to comply with international human rights standards of legal certainty" and "enables the criminalization of a wide spectrum of acts of peaceful expression." Since then, the current Special Rapporteur, together with five Special Procedure mandate holders have again deplored "Saudi Arabia's continued use of counter-terrorism and security-related laws against human rights defenders, urging it to end the repression and release all those detained for peacefully exercising their rights."

Amnesty International has documented a pattern of systematic repression by the Saudi Arabian authorities since 2014 in which they have virtually silenced all independent human rights defenders and critics, sentencing most to lengthy prison terms and forcing some to flee the country. The 2014 counter-terror law has been used to prosecute human rights defenders and activists on vague and overly broad charges for their peaceful activism. The Specialized Criminal Court (SCC), a court set up to deal with security and terrorism-related offences, has sentenced several human rights defenders to up to 15 years in prison in flagrantly unfair trials. Furthermore, Amnesty International has documented a worrying increase in the use of the death penalty against individuals from the Shi'a Muslim minority, including juvenile offenders, following unfair trials before the SCC.

In August 2017, human rights defender Issa al-Nukheifi was brought to trial before the SCC and charged with a number of terrorist offences relating to his human rights activism and social media posts under Royal Decree 44/A, which was issued to complement the 2014 counter-terror law. In September, prominent human rights defenders and co-founders of the Saudi Civil and Political Rights Association (ACPRA) Abdulaziz al-Shubaily and Issa al-Hamid, both of whom were convicted by the SCC, were detained to start serving eight and nine years in prison, respectively. In January 2018, human rights defenders Mohammad al-Otaibi and Abdullah al-Attawi were sentenced to 14 and seven years in prison respectively by the SCC on charges that included "dividing national unity, spreading chaos and inciting public opinion", all of which are considered terrorist crimes.

The situation has also deteriorated on the legislative front since the former Special Rapporteur published his preliminary findings on the counter-terror law. In October 2017, it was announced that a new counter-terror law had been issued to replace the 2014 law. The new law introduces specific penalties for "terrorist crimes", including the death penalty for certain acts, and continues to use an overly vague definition of "terrorism", a "terrorist crime" and a "terrorist entity", in violation of the principle of legality. The definition of a "terrorist crime" in the 2017 counter-terror law includes "endangering national unity" and "destabilizing public order and security of the community", all of which have been

1 This visit was carried out by Mr Ben Emmerson.

and continue to be used to criminalize human rights defenders for their peaceful activism. The new law further serves as a tool to suppress freedom of expression by imposing a 5-10 year prison sentence for directly or indirectly insulting the King or Crown Prince in a way that impugns religion or justice.

The former Special Rapporteur also expressed serious concern in his preliminary findings that "allegations of torture or other forms of ill-treatment… do not appear to systematically result in rapid and thorough investigations", particularly in cases involving the imposition of the death penalty. The former Special Rapporteur also notes that he received reports about due process violations in the SCC, which include "arbitrary arrests, violations of the rights to be informed of the charge, violation of the right to legal counsel… and the admission of evidence obtained by torture in breach of Saudi Arabia's obligations under Article 15 of the UN Torture Convention."

Amnesty International has documented a worrying increase in the use of the death penalty as a weapon to crush dissent in Saudi Arabia since 2013, including the cases of at least 33 members of Saudi Arabia's Shi'a Muslim community who face the death penalty. Among them are Ali al-Nimr, Abdullah al-Zaher, Dawood al-Marhoon and Abdulkareem al-Hawaj, four young men who were found guilty of security-related offences related to their involvement in anti-government protests committed when they were under the age of 18.

All four young men claimed they were tortured to "confess". They are all at imminent risk of execution.

In July 2017, the families of 14 other Saudi Arabian men from the Shi'a Muslim community learned that the Supreme Court had ratified their death sentences after they were found guilty before the SCC of violent offences related to their alleged participation in anti-government protests. Court documents show that the 14 men were subjected to prolonged pre-trial detention and alleged they had been tortured and otherwise ill-treated during their interrogation to extract "confessions". However, the judge failed to order investigations into their allegations. The SCC appears to have largely based its decision on these "confessions".

In addition, the former Special Rapporteur raised concern that there was a "need for greater transparency about civilian casualties in Saudi Arabia's extra-territorial counter-terrorism operation in Yemen" and reminded Saudi Arabia of its obligation to independently investigate any case in which there are reliable indications that civilians may have been killed or injured. Since the Saudi Arabia-led military campaign in Yemen began in March 2015, Amnesty International has documented at least 35 coalition air strikes across six different governorates in Yemen that appear to have violated international humanitarian law. These have resulted in 504 civilian deaths (including at least 153 children) and 366 civilian injuries. According to the UN, 5,144 civilians, including more than 1,184 children, were killed and more than 8,749 civilians wounded from March 2015 until August 2017. The spiralling humanitarian situation has left over 22 million people in need of humanitarian aid and over 7 million people who are on the brink of famine.

In Amnesty International's assessment, the National Commission of Inquiry, established by the internationally recognized government of Yemen and backed by Saudi Arabia, as well as the investigations by the Saudi Arabia-led coalition's Joint Incidents Assessment Team, lack transparency, independence and impartiality. Ultimately, both these mechanisms have to date failed to deter violations by all parties to the conflict, promote respect for the law, and provide justice, truth and reparation for all victims and their families.

In a positive development, the HRC passed a resolution in September mandating a group of experts to investigate violations and abuses by all parties in Yemen and, where possible, to identify those responsible. This constituted a first step towards justice for victims of human rights abuses and grave violations of international law.

Amnesty International urges the HRC members and observer states to call on Saudi Arabia to:

- Repeal the counter-terror law and related legislation or extensively revise it in order to bring it into full conformity with international law and international human rights standards, including by adopting a definition of terrorism that does not infringe on the peaceful exercise of human rights;
- Immediately and unconditionally release all prisoners of conscience, those detained or imprisoned solely on account of their peaceful exercise of freedom of expression and other human rights, including the rights to freedom of association and peaceful assembly;

- As a step towards full abolition of the death penalty, stop using the death penalty on anyone under the age of 18 at the time of their alleged offence in accordance with Saudi Arabia's obligations under the Convention on the Rights of the Child;
- Ensure that defendants receive a fair trial in proceedings that comply with international standards for fair trial, at least equal to Article 14 of the International Covenant on Civil and Political Rights, and without resort to the death penalty;
- Ensure that all allegations of torture and other ill-treatment used to extract "confessions" are promptly and impartially investigated, and those found guilty of committing them are held to account;
- Ensure that "confessions" and other statements obtained under torture and other ill-treatment are not admitted as evidence in any proceedings, other than in the prosecution of those suspected of carrying out the torture;
- Respect international humanitarian law by taking all necessary precautions to minimize harm to civilians, ending unlawful attacks, and granting full and unfettered access to humanitarian aid and commercial imports of essential goods;
- Co-operate fully with investigations by the OHCHR's independent experts and the Group of Eminent Experts on Yemen recently established by the HRC to investigate violations by all parties to the conflict in Yemen;
- Issue standing invitations to the UN Special Procedures and respond, without further delay, to requests to visit from, among others, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture the Special Rapporteur on human rights defenders.